

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/356,771	07/16/99	PORCELLI	J 1310-2

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PM82/1024

EXAMINER	
MORRISON, N	
ART UNIT	PAPER NUMBER
3632	
DATE MAILED:	
10/24/00	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/356,771	PORCELLI, JOSEPH E.	
	Examiner Naschica C Sanders	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

- 1) Responsive to communication(s) filed on 16 July 1999.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) All b) Some \* c) None of the CERTIFIED copies of the priority documents have been:
1. received.
2. received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

#### Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: \_\_\_\_\_

## DETAILED ACTION

This is the first Office Action for serial number 09/356,771, Car and Truck Beverage Holder, filed on July 16, 1999.

### ***Specification***

The disclosure is objected to because of the following informalities: on page 10, line 8 and page 16, line 19, "to" should be --so--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 228,335 to Jackson in view of U.S. Patent 5,791,617 to Boman et al. (Boman). With regards to claims 1-12, Jackson discloses a unitary beverage container holder comprising a first structure defining a rectangular opening/basket having a U-shaped hook extending upwardly therefrom. Jackson does not disclose the holder including a plurality of resilient fingers. Regarding claim 1, Boman discloses a plastic container holder (Fig 8) having resilient fingers (66) extending inwardly toward the opening (64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included resilient fingers in the rectangular opening

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because one would have been motivated to provide a means for retaining the container within the aperture as well as allow for varying sizes of containers as taught by Boman (col. 3, lines 45 -48). Regarding claims 6 and 12, Jackson does not explicitly disclose the holder made of plastic material, however Boman discloses a plastic holder. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the holder from plastic because one would have been motivated to decrease the cost as well as the weight of the holder. Regarding claim 7, Boman does not disclose the fingers having a V-shaped configuration; however, a V-shaped configuration as opposed to the semi-circular configuration is considered to be a design choice as it appears the fingers would perform the intended function equally as well with either configuration.

Claims 13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,297,767 to Miller et al. (Miller) in view of Des. 355,336 to Dickey. With regards to claims 13,15, and 16, Miller discloses a unitary cup holder comprising: a first structure defining a rectangular tray (20) having two openings (31,41) and front (26 generally) and rear (22 generally) flanges, resilient fingers (35,45) extending inwardly, and supporting members (38,48) rotatably coupled to the first structure. Miller does not disclose the openings being rectangular. Dickey discloses a container holder (Fig 1) having a rectangular opening. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the openings in the shape of a rectangle because one would have been

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motivated to provide a holder capable of supporting rectangular beverages as taught by Dickey.

Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Miller in view of Dickey as applied above, and further in view of U. S. Patent 4,530,480 to Pratt. With regards to claim 14, Miller in view of Dickey does not disclose a spring means for biasing the supporting member. Pratt discloses a holder having a supporting member (44a) biased by a spring means (60). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder to include a spring means for biasing the supporting member because one would have been motivated to provide a means for automatically lowering and raising the supporting member based on whether a container has been inserted into the opening as taught by Pratt (col. 5, lines 4-12).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Dickey, and further in view of U.S. Patent 5,897,090 to Smith et al. (Smith). With regards to claim 17, Miller in view of Dickey discloses the cup holder as applied above, but does not disclose the fingers being spring clips. Smith discloses a holder (10) having spring clips (102-110). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the fingers of a spring metal because one would have been motivated to exert an optimum biasing or restraining force on the periphery of the cup as taught by Smith (col. 4, line 50 ff.).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

4,727,890 to Vincent discloses a light holder.

4,819,843 to Nakayama discloses a drink container holder.

Des. 340,622 to Park et al. discloses a drink holder.

5,445,350 to Rigsby discloses an adjustable container holder.

5,509,633 to Ruster et al. discloses a cup holder.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica Sanders, whose telephone number is (703) 305-0228. The Examiner can be normally reached Monday through Friday from 7:00 A.M. to 4:30 P.M. The fax machine telephone number for the Technology Center is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 308-2168.

*N*  
Naschica C. Sanders  
Patent Examiner  
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Art Unit 3632  
10/12/00



ANITA M. KING  
PATENT EXAMINER